

IN THE CIRCUIT COURT OF JASPER COUNTY, MISSOURI
AT CARTHAGE

STATE OF MISSOURI ex rel. JEREMIAH)	
W. (JAY) NIXON, ATTORNEY GENERAL,)	
THE MISSOURI AIR CONSERVATION)	
COMMISSION, and THE MISSOURI)	
DEPARTMENT OF NATURAL)	
RESOURCES,)	
)	
Plaintiff,)	
)	
v.)	Case No.
)	
RENEWABLE ENVIRONMENTAL)	
SOLUTIONS, L.L.C.)	
)	
Defendant.)	
)	
Serve: Corporation Service Company)	
d/b/a CSC-Lawyers Incorporating)	
Service Company)	
221 Bolivar Street)	
Jefferson City, MO 65101)	

PETITION FOR PRELIMINARY AND PERMANENT INJUNCTION
AND CIVIL PENALTIES

COMES NOW the State of Missouri ex rel. Attorney General Jeremiah W. (Jay) Nixon (“Attorney General”), the Missouri Air Conservation Commission (“Commission”) by and through the Attorney General, and the Missouri Department of Natural Resources, (“Department”) by and through the Attorney General, and for its Petition for Preliminary and Permanent Injunction and Civil Penalties against Renewable Environmental Solutions, LLC (“Defendant”), states:

1. That Jeremiah W. (Jay) Nixon is the duly elected, qualified and acting Attorney General of the State of Missouri.

2. That the Missouri Air Conservation Commission (“Commission”) was created pursuant to § 643.040, RSMo, and is empowered under § 643.050, RSMo, to administer, among other things, the Missouri Air Conservation Law, §§ 643.010 to 643.620, RSMo, and pursuant to § 643.050.1(1), RSMo, the Commission shall “adopt, promulgate, amend and repeal rules and regulations consistent with the general intent and purposes of sections 643.010 to 643.190, chapter 536, RSMo, and Titles V and VI of the federal Clean Air Act, as amended, 42, U.S.C. 7661, et seq...”

3. That the Missouri Department of Natural Resources (the “Department”) is a duly authorized state agency created and granted certain powers under § 640.010, RSMo. Its powers and duties generally relate to environmental protection and the conservation and management of natural resources, and include assisting the Commission in administering and enforcing the Missouri Air Conservation Law and its implementing regulations.

4. Defendant, Renewable Environmental Solutions, L.L.C. (hereinafter “RES”) is a joint venture of Changing World Technologies, Inc. and Con-Agra Foods, Inc. RES is an active foreign limited liability company registered with the Missouri Secretary of State. RES operates an agricultural waste processing plant at 530 N. Main Street, Carthage, Missouri (“the plant”). The plant employs a thermal conversion process to convert agricultural and animal wastes to oil, gas, minerals and fertilizer for sale. Upon information and belief, the majority of the waste materials handled by RES originates at the Con-Agra Food, Inc. turkey processing facility, which is adjacent to RES’ Carthage processing plant.

5. As part of its operations, RES engages in numerous activities that discharge air contaminants, including odor. These activities include, but are not limited to, handling turkey

processing residuals, processing these materials into fuel, and handling the by-products of thermo-depolymerization and chemical reforming.

6. § 643.151, RSMo, authorizes the Attorney General to institute “a civil action in any court of competent jurisdiction for injunctive relief to prevent any further violations of §§ 643.010-643.190, RSMo, or for the assessment of a penalty not to exceed ten thousand dollars for each violation for each day, or part thereof, that the violation continues to occur, or both, as the court may deem proper.”

7. 10 CSR 10-3.090(2), “*Restriction of Emission of Odors*,” provides as follows, in pertinent part, “No person may cause, permit or allow the emission of odorous matter in concentrations and frequencies or for durations that odor can be perceived when one (1) volume of odorous air is diluted with seven (7) volumes of odor-free air for two (2) separate trials not less than fifteen (15) minutes apart within the period of one (1) hour.”

8. That the acts of Defendant alleged herein occurred in Jasper County. Therefore, venue is proper in this Court pursuant to § 643.151, RSMo, and this Court has jurisdiction over all parties.

9. On March 31, 2005, the Department issued Notice of Excess Emissions (“NOEE”) to RES for odors emanating from RES’s plant that were detected by Department personnel on March 29, 2005. RES failed to substantiate startup, shutdown, malfunction conditions as the source of the odors pursuant to 10 CSR 10-6.050. Subsequently, the Department upgraded the NOEE to Notice of Violation for violating 10 CSR 10-3.090, *Restriction of Emissions of Odors*. A true and correct copy of the March 31, 2005, NOEE is attached hereto, incorporated herein and marked Exhibit 1.

10. On April 15, 2005, the Department issued NOEE to RES for odor emanating from RES's plant that were detected by Department personnel on April 6, 2005. RES failed to substantiate startup, shutdown, malfunction conditions as the source of the odors pursuant to 10 CSR 10-6.050. Subsequently, the Department upgraded the NOEE to Notice of Violation for violating CSR 10-3.090, *Restriction of Emissions of Odors*. A true and correct copy of the April 15, 2005, NOEE is attached hereto, incorporated herein and marked Exhibit 2.

11. On April 20, 2005, the Department issued NOEE to RES for odors emanating from RES's plant that were detected by Department personnel on April 18, 2005. RES failed to substantiate startup, shutdown, malfunction conditions as the source of the odors pursuant to 10 CSR 10-6.050. Subsequently, the Department upgraded the NOEE to Notice of Violation for violating 10 CSR 10-3.090, *Restriction of Emissions of Odors*. A true and correct copy of the April 20, 2005, NOEE is attached hereto, incorporated herein and marked Exhibit 3.

12. On June 10, 2005, the Department issued NOEE to RES for odors emanating from RES's plant that were detected by Department personnel on June 8, 2005. RES failed to substantiate startup, shutdown, malfunction conditions as the source of the odors pursuant to 10 CSR 10-6.050. Subsequently, the Department upgraded the NOEE to Notice of Violation for violating 10 CSR 10-3.090, *Restriction of Emissions of Odors*. A true and correct copy of the June 10, 2005, NOEE is attached hereto, incorporated herein and marked Exhibit 4.

13. On July 22, 2005, the Department issued NOEE to RES for odors emanating from RES's plant that were detected by Department personnel on July 15, 2005. RES failed to substantiate startup, shutdown, malfunction conditions as the source of the odors pursuant to 10 CSR 10-6.050. Subsequently, the Department upgraded the NOEE to Notice of Violation for

violating 10 CSR 10-3.090, *Restriction of Emissions of Odors*. A true and correct copy of the July 22, 2005, NOEE is attached hereto, incorporated herein and marked Exhibit 5.

14. On August 5, 2005, the Department issued NOEE to RES for odors emanating from RES's plant that were detected by Department personnel on July 27, 2005. RES failed to substantiate startup, shutdown, malfunction conditions as the source of the odors pursuant to 10 CSR 10-6.050. Subsequently, the Department upgraded the NOEE to Notice of Violation for violating 10 CSR 10-3.090, *Restriction of Emissions of Odors*. A true and correct copy of the August 5, 2005, NOEE is attached hereto, incorporated herein and marked Exhibit 6.

15. On July 2, 2002, the Department issued RES Permit #082002-001 ("the permit") to construct an air containment source ("the plant") pursuant to special conditions contained in said Permit.

16. RES has never complied with special condition 5 of the permit, which requires all solid and liquid raw materials awaiting processing to be stored under roof in a storage area. Raw materials handling is one area of plant operations in which the Department believes that ambient odors escape from the facility.

17. RES has failed to comply with special condition 5 of the permit, in violation of Missouri's Air Conservation Law, § 643.151, RSMo, and Missouri State Rule, 10 CSR 10-6.060(5), for each and every day since permit issuance.

18. For each violation of special condition 5 of said permit, and each violation of 10 CSR 10-3.090, *Restriction of Emissions of Odors*, the court may assess against RES a penalty not to exceed ten thousand dollars (\$10,000.00) for each violation per day for each day, or part thereof, that the violation continues to occur, or both, under § 643.151.3, RSMo.

19. RES's plant has caused and continues to cause the emission of air contaminants in violation of Sections 643.010 through 643.190, RSMo, and rules promulgated thereunder.

20. Based on information and belief, the Department has exhausted all avenues of conference, conciliation and persuasion in an effort to assist RES in resolving this issue.

21. Plaintiff State of Missouri believes that, unless restrained and enjoined by the court, defendant will continue to violate the permit and 10 CSR 10-3.090, *Restriction of Emissions of Odors*.

22. Plaintiff does not have an adequate remedy at law.

WHEREFORE, Plaintiff prays for this Court to grant the following relief:

A. Issue a Preliminary and Permanent Injunction ordering that RES cease all activities conducted under Permit #082002-001 that result in discharges of air contaminants in violation of Permit #082002-001;

B. Issue a Preliminary and Permanent Injunction ordering that RES immediately take any and all steps necessary so as to ensure that the plant complies with 10 CSR 10-3.090, "*Restriction of Emissions of Odors*;"

C. Issue a Preliminary and Permanent Injunction ordering that RES immediately take any and all steps necessary to come into compliance with the permit;

D. Impose against Defendant RES the maximum penalties allowed by law for said permit violations and violations of 10 CSR 10-3.090, *Restriction of Emissions of Odors*; and

E. Award Plaintiff costs and expenses incurred by the State, as well as costs expended at hearing, and any and all such other relief as this court deems just and proper under the circumstances.

Respectfully submitted,

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